Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket 96-98
	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	)	IAD File No. 94-102

PETITION FOR RECONSIDERATION AND CLARIFICATION OF THE RURAL TELEPHONE COALITION

October 7, 1996

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SUMMARY

The RTC requests reconsideration and clarification of the Order imposing dialing parity requirements on rural telephone companies under an implementation schedule that makes deployment mandatory for rural telephone companies and that requires the companies to file state implementation plans. The Commission should revise its rules to state that a rural telephone company is not required to deploy dialing parity until it receives a request from a second intraLATA toll carrier. Rural telephone companies should not be required to make unnecessary investments that bring no public benefits and state commissions should not be required to hold modification and suspension hearings to relieve the companies of obligations in the absence of demand for services.. The legislative history of the Act evidences a Congressional intent that the duty to provide dialing parity does not arise in the absence of a request.

The Commission should also clarify the use of the term intraLATA in Rule 51.5. Clarification is required to enable independents that operate in territories that are not LATAs to understand their obligations with dialing parity. Likewise, modification and clarification of the rules is required to more clearly explain what services trigger an independent's obligation to begin providing dialing parity. Rule 52.211(f) could be interpreted to imply that all toll service completed to another LEC is in-region interLATA traffic. Such a characterization would not comport with the intent of the Act or the purposes of the rules which are intended to require a LEC to deploy dialing parity when it begins to offer long distance rather than upon the continuation of traditional service under long standing arrangements for the division of revenues and the provision of intraLATA toll.

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PETITION FOR RECONSIDERATION AND CLARIFICATION
OF THE
RURAL TELEPHONE COALITION

Pursuant to 47 C.F.R. § 1.429 the Rural Telephone Coalition ("RTC") submits this Petition for Reconsideration and Clarification of the Commission's Second Report and Order and Memorandum Opinion and Order ("ORDER") released August 8, 1996 and published in the Federal Register on September 6, 1996. The Rural Telephone Coalition ("RTC") is comprised of the National Rural Telecom Association ("NRTA"), the National Telephone Cooperative Association ("NTCA"), and the Organization for the Promotion and Advancement of Small

Telecommunications Companies ("OPASTCO"). This petition is limited to seeking reconsideration of certain requirements imposed on rural telephone companies regarding dialing parity, and for clarification of certain terms related thereto. The RTC filed comments on this issue in response to the Commission's Notice of Proposed Rule Making (NPRM) released April 19, 1996.

I. TOLL DIALING PARITY REQUIREMENTS SHOULD NOT BE IMPOSED ON RURAL TELEPHONE COMPANIES UNTIL THEY RECEIVE A BONA FIDE REQUEST.

The RTC comments, as well as those of other parties, proposed that toll dialing parity should only be required to be deployed following a bona fide request from a toll carrier, consistent with the Commission's equal access requirements.[1] The Commission rejected this suggestion on the grounds a deviation from its general implementation schedule was unnecessary because smaller LECs may petition their state commission for suspension or modification of the dialing parity requirement of 47 U.S.C. § 251(b).[2] The Commission should reconsider its decision because it will result in a substantial waste of resources, both money and time, to the ultimate detriment of telephone subscribers, with no offsetting benefits.

A. Toll Dialing Parity is Essentially Equal Access.

In the Equal Access proceedings, the Commission established procedures for independent telephone companies which recognized that it made no sense to require a telephone company to undertake substantial investment on a "Field of Dreams" basis, but provided that when a second long distance carrier wanted to serve a LEC's subscribers, the LEC should equip itself to allow

[1] RTC Comments at 6-7.

[2] *ORDER* at ¶ 61.

for subscriber presubscription within a reasonable time.[3] Now that the concept, renamed dialing parity, has been expanded to all toll service, the same sensible approach should apply. The Commission, however, has chosen to change direction and impose a schedule on all LECs, regardless of whether there will be any use made of the investments required. The only reason stated for this departure is the possibility that a suspension or modification may be obtained from the state commission pursuant to 47 U.S.C. § 251(f)(2).

The problem with the Commission's approach is that it trades one unnecessary expense for another, increases the work load of state commissions, and creates uncertainty at a time of considerable unavoidable turmoil. Until a rural telephone company receives a request from a second "intralata" toll carrier, their can be no justification for requiring the company to make substantial investments for which their will be no benefit to the ratepayers but the obligation to pay higher rates. It is no answer to say that the LEC should initiate a state proceeding to protect itself from an unnecessary expenditure, because that in itself creates an unnecessary expenditure of time and money, requiring management distraction and the hiring of consultants, engineers and attorneys. The proceeding is made especially burdensome by the Commission's rule at 47 C.F.R. § 51.405(d) which, unless stayed, requires the LEC to prove that making investment for which there is no demand would be an "undue economic burden beyond the economic burden that is typically associated with efficient competitive entry."[4]

A more sensible approach, consistent with the apparent intent of the Commission's new

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[3] *See, In the Matter of MTS and WATS Market Structure Phase III*, 100 F.C.C. 2d 860 (1985).

[4] On October 2, 1996, the RTC filed a Motion for Stay Pending Judicial Review with the Commission in respect to 47 C.F.R. §51.405 and other sections.

rules to foster efficiency[5] would be for the Commission not to impose a deployment schedule on LECs who have no demand for a service. If and when such demand arises, it will then be time for properly supported requests to state commissions, if they are necessary. In the meantime, the FCC should not burden the LECs and the State Commission's with unnecessary proceedings.

Nor should rural LECs be required to submit a "toll dialing parity" implementation plan to the states, for this again creates work that may have no purpose, or is inconsistent with the manner in which the state plans to address petitions for suspension or modification.

II. THE COMMISSION SHOULD CLARIFY ITS USE OF THE TERM "LATA" IN RESPECT TO INDEPENDENT TELEPHONE COMPANIES.

A. Relationship of Independents to LATAs under the Modification of Final Judgment ("MFJ")[6]

A primary purpose of the MFJ was to create a regulatory climate conducive to the development of competition in the long distance industry.[7] On the assumption that competition was most likely to develop between Metropolitan Statistical Areas (MSAs), AT&T was required to develop a plan which identified those locations between which a BOC could carry traffic and those which it could not, thus preserving the competitive markets for interexchange carriers free from competition from BOCs which also controlled their access to subscribers for origination

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[5] 47 C.F.R. § 51.505(b)(1) defines a new method of cost calculation which requires studies to utilize "the most efficient telecommunications technology currently available and the lowest cost network configuration...."

[6] This explanation is derived from a statement previously provided to the Common Carrier Bureau regarding the issue of how an independent can reconfigure its connections from a point in one BOC LATA to a point in another. Letter to Geraldine Matise from David Cosson, May 16, 1996.

[7] *U.S. v. Western Electric,* 552 F.Supp. 131, 188 (D.D.C. 1982).

and termination of such calls.[8] These areas between which a BOC could not carry traffic were designed "Local Access and Transport Areas" or LATAs.[9]

The MFJ itself made no mention of independent telephone companies and did not purport to govern their activities. As the parties developed the reorganization plan, they recognized that the BOCs participated with independents in jointly provided access to interexchange carriers and decided to "assign" the traffic from independent offices to a LATA for purposes of determining whether a BOC could or could not carry that traffic.[10] Although the legal distinction was carefully maintained as to the status of "assigned" traffic, for ease of discourse it became common industry practice to refer to independent traffic and territory in reference to the LATA to which it was assigned. This "shorthand" did not however, change the fact that the obligations were imposed solely upon the BOCs.

B. The Act Does Not Include Independents Within LATAs.

The 1996 Act terminated the MFJ but retained the prohibition on BOC provision of interLATA traffic originating in a BOC's region until the Commission approves an application

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[8] *U.S. v. Western Electric*, 569 F.Supp. 990 (D.D.C. 1983).

[9] LATAs were intended to be "large enough to comprehend contiguous areas having common social and economic characteristics, but not so large as to defeat the intent of the decree to separate the provision of intercity services from the provision of local exchange service." The MFJ used the term "exchange" but the parties soon realized that this term would be difficult to distinguish from the meaning of exchange as used in the Communications Act and in industry usage. The amount of traffic within and between LATAs was also used to divide assets between the BOCs and AT&T.

[10] 569 F. Supp. at 1008, n. 85. Some independent areas were designated unassigned and thus all traffic to and from them was considered interLATA. *Id. At 1057, 1113, n. 240.* With no BOCs in Alaska, Hawaii and the territories, no designation was made as to independents in those areas. Even though BOC territory in a LATA was often not literally "contiguous", the court considered independent territory irrelevant to the issue of contiguity. *Id. at 1010.*

meeting certain criteria.[11] The Act defines LATA to include those areas established pre-enactment containing no more than one MSA except as permitted under the MFJ and those established or modified post enactment by a BOC and approved by the Commission. "InterLATA" is defined as "telecommunications between a point located in a [LATA] and a point outside such area." No mention is made in the Act or in the Conference report of what relationship, if any, is intended between independent telephone companies and LATAs. It is clear, however, that the interLATA prohibition applies only to BOCs and that independents are not "in" LATAs, since the definition of a LATA does not include independent territory. Further, all traffic between points in a BOC territory and points in independent territory is necessarily "interLATA." Section 271(f), however, sanctions activities previously approved by the Court, apparently including the various waivers issued in connection with changes in association of independent traffic.

C. The Dialing Parity Rules Should Be Clarified To Be Consistent With The Act.

The Order and the rules adopted thereby regarding dialing parity are not consistent with the foregoing explanation of the concept of LATAs as they relate to independent LECs, nor are they internally consistent.[12] Rather, the general assumption apparently is that traffic of all companies is either inter-or intraLATA. There are situations however, where it is not clear how to categorize traffic under the Act. Since independents are not "in" LATAs, toll traffic between the exchanges of a single independent, or between two independents is not, strictly speaking

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[11] 47 § U.S.C. 271.

[12] The *ORDER* states its agreement with USTA's comment that independents were not subject to the interLATA restriction of the MFJ, but does not explain how independents relate to the new Act's restrictions. *Order* at n. 80.

"interLATA" and the sole purpose of LATAs-to restrict traffic which may be carried by a BOC-has no relevance. In a few instances, the term "association" is used, but it is never stated whether this is meant to carry forward, intact, the MFJ concept, or what is to be done by LECs which were not "associated" under the MFJ.[13] The provision providing LECs with the option to choose the LATA within their state with which to associate for the provision of intraLATA dialing parity is made subject to state commission determination of whether the proposed "association" is procompetitive and in the public interest, unless the state determines to use state boundaries instead.[14] What is not clarified is whether this "association" can be different from the association approved under the MFJ, and if so, whether upon approval by the state, the BOC to whom the traffic flows will be able to consider it "intraLATA" for the purpose of 47 U.S.C. 271. Clarity is required to enable independents to understand their obligation to provide dialing parity carriers operating in areas that are not LATA's

III. THE COMMISSION SHOULD MODIFY ITS RULES TO MORE CLEARLY EXPLAIN WHAT SERVICES TRIGGER AN INDEPENDENT'S OBLIGATION TO BEGIN DIALING PARITY.

Rule 52.211 requires LECs to provide dialing parity according to an implementation schedule that is tied to their provision of *in-region, interLATA toll services or* interstate toll services. Section 52.211(f) states: "for LECs that are not Bell Operating Companies the term *in-region, interLATA toll service, . . .* includes the provision of toll service outside of the LEC's study area." Following the conversion of interLATA (state and interstate) toll to the access charge system in 1984, many states retained the historic pattern, or something close to it, for

[13] *ORDER*, ¶ 38.

[14] *ORDER*, ¶ 59, 47 C.F.R. 51.213(b)(2).

intraLATA toll.[15] Under these arrangements, independent companies continued to route their traffic to a tandem switch operated by a BOC (or other large company) in the LATA with which the independent was associated under the MFJ. The independent billed its subscribers pursuant to the toll tariff filed by the BOC, and divided the revenue according to an agreed upon formula. The nature and relative size of the independent and BOC areas has meant that a portion of the intraLATA toll traffic originated by the independent's subscribers was completed to BOC subscribers, outside the independent's territory.

The Commission's implementation plan appears to contemplate a significant timing difference for deployment of dialing parity between LECs which are already providing interLATA toll and those LECs that are currently providing interLATA toll. The former LECs must implement dialing parity by August 8, 1997, while the latter LECs may wait until they begin providing interLATA toll. The RTC assumes that the Commission did not intend to classify most independents as already providing in-region interLATA as a result of what has been considered intraLATA by industry practice since 1984. Unfortunately, Section 52.211(f) could be read to imply that all toll service completed to another LEC is "in-region interLATA". The RBC therefore requests that the Commission clarify that this is its intent or modify the rule accordingly. This will maintain the distinction between those LECs who consciously enter the long distance business, and those who merely carry on their traditional service.

[15] Other states adopted different systems, such as access charges, Originating Responsibility Plans and variations on the settlement theme.

IV. CONCLUSION

The Rural Telephone Coalition fully recognizes the fact that the Communications Act has extended the concept of equal access to all toll service (along with its analogue in the local arena) and accepts that presubscription is the most natural way to implement this requirement. However, based on our experience that the rural areas are often the last to receive competitive toll entry, we propose that the public interest will be best served by an implementation schedule driven by market forces rather than government edict. Rural telephone companies have shown that they are able to respond to the market's requirements, but see no reason to build a "field of dreams" until the ball players arrive and show they are not ghosts, but are ready to play. The Commission should therefore reconsider its deployment and state plan submission requirements to require only that service be provided within six months of a bona fide request, unless the LEC can demonstrate to the state commission that a longer period is required.

The RTC also asks that the Commission clarify its rules with respect to the application requirements for non-BOC LECs based upon whether traffic is inter or intraLATA. The Commission should explicitly recognize in its rules that independent LEC's are not "in" LATAs by adding to the definitions in Section 51.5 the following: For the purposes of this part the term "intraLATA" means telecommunications between points located in a LATA. With respect to a LEC that is not a BOC, such term means telecommunications between points in such LECS's study area and points in the LATA with which such communications were permitted by the court in *U. S. v. Western Electric*, or are subsequently permitted by the Commission. Finally, it needs to explain the status of independents in those states where there are no BOCs.

The Commission should also clarify or modify Section 52.111(f) to make clear that participation in traditional division of revenue intraLATA toll agreements does not involve a LEC in the provision of "in-region interLATA" service . . . .

Respectfully submitted,

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October 7, 1996

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Petition for Reconsideration and Clarification of the Rural Telephone Coalition in CC Docket No. 96-98 was served on this 7th day of October 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

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Gail C. Malloy

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